

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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MISCELLANEOUS CIVIL APPLICATION (Tr) NO. 1136/2018

Vaishali w/o Vinod Pardeshi
Aged about 35 years, ccu: Household
R/o 105, Rajlaxmi Society
Bokhara, Nagpur.

..APPLICANT

versus

Vinod s/o Baban Pardeshi
Aged about 40 years, occu : Business
R/o Lok Seva Chall, Block No.28
patel nagpar Golibar road
Santacruz (E) Mumbai.

..RESPONDENT
(Non-Applicant)

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Ms. D.V.Sapkal, Advocate (appointed) for the applicant
None for respondent though served.
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CORAM: MRS.SWAPNA JOSHI, J.
DATED : 22nd Febraury, 2021

ORAL JUDGMENT:

1. Ms. D.V. Sapkal, learned Advocate for the applicant tenders a *pursis* regarding service to the respondent. The same is accepted.
2. **Rule.** Rule is made returnable forthwith. Heard finally.
3. By this Application, the applicant seeks transfer of Hindu Marriage Petition (HMP) No. A-143/2017 instituted by the respondent-non applicant, pending on the file of Family Court, Nashik Road, Nashik to the Family Court, Nagpur.
4. The marriage between the applicant and respondent was solemnized on 04.05.2001 at Bhusawal, Dist. Jalgaon. as per the Hindu rites and customs. After the marriage, the applicant-wife started co-habiting with the respondent-husband at her matrimonial home, at Mumbai. Out of the said wedlock, the couple was blessed with two sons. However, due to ill-treatment at the hands of the non-applicant, the applicant started residing with her parents at Nagpur. It is submitted that the applicant

filed Misc. Criminal Case No.4641/2016 against the non-applicant and his parents, under the provisions of Domestic Violence Act 2005 in the Court of Judicial Magistrate, First Class at Nagpur; so also filed an application under Section 125 of Cr.P.C. in the Court of JMFC Nagpur. The non-applicant appeared in the aforesaid proceedings and filed his reply. It is submitted that on 06.07.2017, the non-applicant has filed petition under section 9 of the Hindu Marriage Act, for restitution of conjugal rights at Nashik.

5. Ms. Sapkal, learned Advocate (appointed) for applicant submits that the distance between Nashik and Nagpur is about 689 kms. and, as such, it is very difficult to attend the court proceedings at Nashik, that too with her minor son, who is aged about 5 years. She further submitted that the applicant is dependent on her parents financially. The applicant, therefore, requested that the said proceedings be transferred to Nagpur.

6. It is well settled by now that convenience of the wife is to be considered and as such, it would be just and proper to transfer HMP No.A-143/2017 from Nashik to Nagpur.

7. The Hon'ble Apex Court in the case of Sumita Singh vs. Kumar Sanjay and another, reported in AIR 2002 SC 396 has observed that the wife's convenience must be considered in matrimonial proceedings, particularly when the husband has filed the petition against her. In view of the facts and circumstances of the case, following order is passed:-

ORDER

- i) The Misc. Civil Application No.1136/2018 is allowed.
- ii) The proceedings bearing HMP No.A.143/2017 pending on the file of Family Court, Nashik Road, Nashik stands transferred to the Family Court, Nagpur.
- lii) Rule is made absolute in aforesaid terms. There shall be no order as to costs.

iv) The professional fees of Ms.Sapkal, learned Advocate (appointed through Legal Aid) be quantified, as per rules.

JUDGE

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